

May 31, 2007

Orza Salone  
#944875 LOC CE-221  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

*Re: Formal Complaint 07-FC-116; Alleged Violation of the Access to Public Records Act by the Indiana Supreme Court Clerk*

Dear Mr. Salone:

This is in response to your formal complaint alleging that the Indiana Supreme Court Clerk ("Clerk") violated the Access to Public Records Act by charging an excessive copy fee. I find that the Clerk did not violate the Access to Public Records Act.

#### BACKGROUND

You filed a formal complaint stating that you received a letter from the Clerk telling you that you could request a record by designating from the docket provided the precise record you would like. The Clerk would charge \$1 per page for these records, which you believe is excessive and a violation of the Access to Public Records Act.

Mr. Kevin Smith, Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court submitted a response to your complaint, which I enclose. First, Mr. Smith stated that one of the records you requested, Findings of Fact or Conclusions of Law under two cases involving Judge Brubaker, do not exist in the Court's files. Therefore, he cannot provide a record that does not exist, if that is your complaint. Second, Mr. Smith provided a copy of a court order issued on December 6, 2005 concerning the fees charged by the Clerk for copies of records and other services. In this order issued by Randall T. Shepard, Chief Justice of Indiana, the fee for copies of letter or legal size paper is \$1.00 per page. Because a public agency may charge any copy fee that is ordered by a court, the Clerk did not charge an excessive copy fee, argues Mr. Smith.

## ANALYSIS

A public agency is permitted to charge a fee for copies of public records under the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-8. However, no provision in section 8 specifies a copy fee for a state agency that is not included in the definition of “state agency” under IC 4-13-1-1. The term “state agency” does not include the judicial or legislative departments of state government. IC 4-13-1-1(b).

Nevertheless, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute *or is ordered by a court*. IC 5-14-3-8(f)(Emphasis supplied.)

The enclosed order of Chief Justice Shepard sets the copying fee for Clerk records at \$1.00 per page. It is my opinion that this fee is authorized by the Access to Public Records Act.

## CONCLUSION

For the foregoing reasons, I find that the Indiana Supreme Court Clerk did not violate the Access to Public Records Act by charging \$1.00 per page for records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Kevin Smith